

Message Text

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ACTION OPIC-06

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FM AMEMBASSY NEW DELHI
TO SECSTATE WASHDC 7324

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PASS OPIC

E.O. 11652: N/A
SUBJECT: PIBCO COOLEY LOAN

REF: A. STATE 036485
B.NEW DELHI 0029
C. STATE 276894
D.NEW DELHI 16062
E.NEW DELHI 15418
F. KSTATE 247915
G. NEW DELHI 14725

SUMMARY: ACTION BY JM TO ASSIST REVIVAL OF PIBCO IS CONSPICUOUS BY ITS ABSENCE. AN EXAMINATION OF INDIAN LAW HAS LED TO CONCLUSION THAT WE HAVE LEGAL BASIS TO EXERCISE OVERRUN COMMITMENT UNDER PROVISIONS OF SECTION 126 OF INDIAN CONTRACT ACT, AND MISSION FEELS THAT JM INDIA COULD BE SUED IN DELAWARE UNDER U.S. LAW. MISSION IS NOT OPTIMISTIC THAT U.S. DEMANDS UNDER THE OVERRUN COMMITMENT WOULD PRODUCE MUCH FROM THE PUNJ'S, BUT THAT THE DEMAND ON JM INDIA MAY CATALYZE ACTION ON THE PART OF JM MISSION BELIEVES THAT JM SHOULD BE REQUESTED TO PERFORM STUDY TO ARRIVE AT COST OF COMPLETING PROJECT, WITH THE IDEA BEING THAT THE DATA WOULD SERVE AS THE BASIS FOR MAKING DEMAND UNDER THE OVERRUN COMMITMENT. IN THE INTERIM, PRESSURE SHOULD BE KEPT ON JM TO MOVE ON OTHER FRONTS, NAMELY MANAGEMENT AND TECHNICAL ASSISTANCE TO PIBCO. ACTION REQUESTED: OPIC COMMENTS ON SUGGESTIONS MADE HEREIN. END SUMMARY.

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1. MISSION LEGAL OFFICER RAO HAS REVIEWED INDIAN LAW REMEDIES AVAILABLE TO AID UNDER OVERRUN COMMITMENT. HE CONSLUDES THAT AID HAS LEGAL BASIS TO COMPEL THE PUNJ'S IN THEIR PERSONAL CAPACITIES AND/OR JM INDIA IN ITS CORPORATE CAPACITY IN PROPORTION TO THEIR VOTING EQUITY SHARE CAPITAL, TO PUT WHATEVER MONIES IN EXCESS OF 8 MILLION RUPEES THAT WOULD BE REQUIRED FOR THE COMPLETION OF THE PROJECT AS DEFINED IN THE LOAN AGREEMENT. WE ASSUME THAT JM INDIA, AS DELAWARE CORPORATION, COULS BE SUED IN THE U.S. UNDER U.S. LAW.MISSION BELIEVES THAT THE APPLICABLE LAW IN INDIA FOR PURPOSE OF ENFORCING OVERRUN COMMITMENT IS THE INDIA CONTRACT ACT AND NOT THE SPECIFIC RELIRF ACT AS SUGGESTED BY OPIC IN REF A. PRESUME RAO LEGAL NOTE HAS BEEN DELIVERED TO FRANKLIN BY VARSHNEYA, WHO IS ON TDY WITH AID CONTROLLER'S OFFICE THIS MONTH. STATED BRIEFLY, WE ARE OF IPINION THAT THE OVERRUN COMMITMENT IS A CONTRACT OF GUARANTEE FALLING WITHIN THE SCOPE OF THE DEFINITION OF SECTION 126 OF THE CONTRACT ACT WITH REMEDIES ARISING THEREFROM

2. WHILE THE CINI-KATZ LETTER OF 12 DECEMBER PROPOSED SOMETHING LESS THAN WE HAD HOPED, IT, AS SOMEONE SAID, WAS AT LEAST A START. YET THREE MONTHS LATER THERE HAS BEEN NO EVIDENCE OF MOVEMENT ON THE PART OF JM TO DO ANYTHING. REF C DOES NOT, IN OUR IPINION, ENTIRELY DESCRIBE THE CONTENTS OF THE CINI LETTER. HAS IT, FOR EXAMPLE, BEEN ESTABLISHED THAT JM IS UNWILLING TO VOLUNTARILY ASSIST PIBCO IN COMPLETION OF THE PROJECT, INCLUDING FINANCING WHERE APPROPRIATE? IF IT HAS, THEN THE OVERRUN COMMITMENT SHOULD BE EXERCISED, AND WE SHOULD HOLD CINI'S FEET TO THE FIRE TO GET HIM TO COME THROUGH WITH THE COMPLEMENTARY MANAGEMENT AND TECHNICAL ASSISTANCE HE REFERRED TO IN HIS LETTER. MISSION WOULD APPRECIATE OPIC COMMENT ON PAR 2(A) OF REF B.

3. MISSION FEELS THAT THE PUNJ'S POSSESS SUFFICIENT COMMERCIAL MOTIVATION TO MAKE AN EFFORT TO COMPLETE THE PROJECT IF JM IS AT THEIR SIDE AS THEY SHOULD BE. MOST OF THE MANAGEMENT PROBLEMS AND PROBABLY ALL THE TECHNICAL PROBLEMS CAN BE OVERCOME WITH JM HELP. WE ARE NOT SANGUINE THAT THE PROJECT CAN BE ACHIEVED WITHOUT IT, AS WE EXPRESSED IN LIMITED OFFICIAL USE

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REF E. SIMILARLY, WE ARE NOT CONFIDENT THAT WE STAND TO GAIN ANYTHING BY CALLING THE LOAN, RECOGNIZING THAT WE HAVE NO SECURITY. NOR DO WE EXPECT THAT THE PERSONAL GUARANTEES OF THE PUNJ.S ARE LIKELY TO PRODUCE ANYTHING SUBSTANTIAL SINCE UNVERIFIED INFORMATION FROM VAOIOUS QUARTERS HERE IS THAT THE PUNJ'S DO NOT OWN ENOUGH IMMOVABLE PROPERTIES IN INDIA IN THEIR NAME TO SATISFY A DECREE EVEN IF ONE WERE OBTAINED UNDER THE INDIAN CONTRACT ACT. THIS ESSENTIALLY

BRINGS IT DOWN TO THE JM INDIA OVERRUN COMMITMENT.
MISSION IS UNAWARE OF THE CREDIT WORTHINESS OF JM INDIA.
IT IS POSSIBLE THAT IT IS A SHELL ORGANIZATION, SINCE IT WAS
VERY LIKELY INCORPORATED FOR THE PURPOSE OF ENABLING
PIBCO TO RAISE THE LOAN FROM AID. MISSION SUGGESTS THAT
OPIC ASCERTAIN THROUGH ITS OWN SOURCES THE VALUE OF ASSETS
AND FINANCIAL SOUNDNESS OF JM INDIA IN THE U.S.

4. RECOGNIZING THAT EXERCISING THE OVERRUN COMMITMENT
AND/OR CALLING THE LOAN MAY BE AN EXERCISE IN FUTILITY,
MISSION FEELS IT WOULD BE REMISS IN NOT DOING SO. THERE IS
ALSO THE CONSIDERATION THAT A DEMAND ON JM INDIA FOR ITS
SHARE OF THE OVERRUN WOULD PLACE THEM IN THE POSITION OF
DECIDING WHETHER OR NOT THEY COULD AFFORD TO RESIST RESPONDING
TO THE DEMAND. MISSION SUGGESTS THAT OPIC SHOULD FAVORABLY
CONSIDER RESORTING TO THE OVERRUN COMMITMENT AS A FIRST STEP
TOWARDS A CURE TO THE PIBCO PROBLEM.

5. MISSION IS UNAWARE OF TODAY'S COST REQUIRED TO COMPLETE
THE PROJECT, BUT NOTES THAT IT WOULD INCLUDE BALANCING EQUIP-
MENT FOR THE PRESENTLY INSTALLED LINE, AND INSTALLATION OF THE
SECOND LINE IN ITS PROPER MODIFIED CONFIGURATION. AN
ENGINEERING STUDY WOULD BE REQUIRED TO GET SUCH INFORMATION
WHILE AT FIRST GLANCE THE IDEA OF JM DENVER DOING SUCH A STUDY
WOULD SEEM INAPPROPRIATE, MISSION FEELS THAT THEY SHOULD
BE REQUESTED TO DO IT AT THEIR OWN EXPENSE, BEING AT THE SAME
TIME ADVISED THAT IF THEY CHOSE NOT TO, WE WILL HAVE IT DONE
BY AN APPROPRIATE ENGINEERING FIRM. JM'S 1972 ESTIMATE
OF \$152,000 TO COMPLETE THE PROJECT WOULD SERVE AS A FLOOR
PRICE WHICH WOULD PROBABLY BE INFLATED TO AROUND \$225,000
TODAY. THE REQUEST FOR THE STUDY FROM JKM, COUPLED WITH
A CLEAR SIGNAL THAT WE INTEND TO EXERCISE THE OVERRUN
COMMITMENT, MAY PRODUCE RESULTS.

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6. TO SUMMARIZE, MISSION WOULD LIKE OPIC COMMENTS ON:
A. APPARENT INCONSISTENCY BETWEEN CONTENTS OF CINI'S
12 DEC LETTER TO KATZ, AND REF C.
B. CREDIT WORTHINESS OF JM INDIA IN THE US
C. APPROACHING JM DENVER WITH REQUEST FOR THEM TO
CARRY OUT A STUDY TO ARRIVE AT PROJECTED COSTS TO
COMPLETE THE PIBCO PROJECT.
D. THE IDEA OF, AS A FIRST STEP IN THE PROCESS OF
RECOVERY OF PIBCO, CALLING THE OVERRUN COMMIT-
MENT, AT THE SAME TIME WE URGE JM DENVER TO
MAKE GOOD THEIR DECEMBER 1974 OFFER TO GIVE
MANAGEMENT AND TECHNICAL ASSISTANCE TO PIBCO.
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